

MONTANA LEGISLATIVE HISTORY

Chapter 385 19 93

Bill H 395 S _____ Original bill & history ✓ c

H. Committee on Natural Resources

Hearing Date(s) Feb 10 ✓ c

Feb 15 ✓ c

_____ c

_____ c

Date Out Feb 17 ✓ c

S. Committee on Natural Resources

Hearing Date(s) Mar 22 ✓ c

Mar 23 ✓ c

_____ c

_____ c

Mar 24 ✓ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

CHAPTER NUMBER 446
EFFECTIVE DATE: 07/01/93

HB 394 INTRODUCED BY BENEDICT, ET AL.
GENERALLY REVISE MONTANA SCIENCE AND TECHNOLOGY FINANCING
ACT

1/30	INTRODUCED		
1/30	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/30	FISCAL NOTE REQUESTED		
1/30	FIRST READING		
2/05	FISCAL NOTE RECEIVED		
2/09	FISCAL NOTE PRINTED		
2/11	HEARING		
2/12	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED	60	38
2/19	3RD READING PASSED	63	35
	TRANSMITTED TO SENATE		
2/22	FIRST READING		
2/22	REFERRED TO BUSINESS & INDUSTRY		
3/23	HEARING		
3/26	COMMITTEE REPORT—BILL CONCURRED		
3/31	2ND READING CONCURRED	46	2
4/01	3RD READING CONCURRED	47	1
	RETURNED TO HOUSE		
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/08	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 331		
	EFFECTIVE DATE: 07/01/93		

HB 395 INTRODUCED BY FOSTER, ET AL.
TEMPORARILY CLOSE UPPER MISSOURI RIVER BASIN TO CERTAIN
APPROPRIATIONS

1/30	INTRODUCED		
1/30	REFERRED TO NATURAL RESOURCES		
1/30	FISCAL NOTE REQUESTED		
1/30	FIRST READING		
2/04	FISCAL NOTE RECEIVED		
2/05	FISCAL NOTE PRINTED		
2/10	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED		
2/19	2ND READING PASSED	86	9
2/22	3RD READING PASSED	88	11
	TRANSMITTED TO SENATE		
3/01	FIRST READING		
3/01	REFERRED TO NATURAL RESOURCES		
3/22	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/26	2ND READING CONCURRED	36	1
3/27	3RD READING CONCURRED	45	3
	RETURNED TO HOUSE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	92	6
4/02	3RD READING AMENDMENTS CONCURRED	92	6
4/07	SIGNED BY SPEAKER		
4/08	SIGNED BY PRESIDENT		
4/13	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		

HOUSE BILL NO. 395

INTRODUCED BY FOSTER, GROSFIELD, BARTLETT

IN THE HOUSE

JANUARY 30, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 17, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 18, 1993	PRINTING REPORT.
FEBRUARY 19, 1993	SECOND READING, DO PASS.
FEBRUARY 20, 1993	ENGROSSING REPORT.
FEBRUARY 22, 1993	THIRD READING, PASSED. AYES, 88; NOES, 11.
FEBRUARY 23, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 24, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 26, 1993	SECOND READING, CONCURRED IN.
MARCH 27, 1993	THIRD READING, CONCURRED IN. AYES, 45; NOES, 3.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 2, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 395
 2 INTRODUCED BY Foster
 3 Garfield Bartlett

4 A BILL FOR AN ACT ENTITLED: "AN ACT TEMPORARILY CLOSING THE
 5 UPPER MISSOURI RIVER BASIN TO FURTHER APPROPRIATIONS, EXCEPT
 6 APPROPRIATIONS FOR GROUND WATER, NONCONSUMPTIVE WATER USE,
 7 AND STORAGE PROJECTS; AND PROVIDING AN IMMEDIATE EFFECTIVE
 8 DATE AND AN APPLICABILITY DATE."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. **Section 1. Definitions.** Unless the
 12 context requires otherwise, in [sections 1 and 2], the
 13 following definitions apply:

14 (1) "Application" means an application for a beneficial
 15 water use permit pursuant to 85-2-302 or a water reservation
 16 pursuant to 85-2-316.

17 (2) "Ground water" means water that is beneath the land
 18 surface or beneath the bed of a stream, lake, reservoir, or
 19 other body of surface water and that is not immediately or
 20 directly connected to surface water.

21 (3) "Nonconsumptive use" means a beneficial use of
 22 water that does not cause a reduction in the source of
 23 supply and in which substantially all of the water returns
 24 without delay to the source of supply, causing little or no
 25 disruption in stream conditions.

1 (4) "Upper Missouri River basin" means the drainage
 2 area of the Missouri River and its tributaries above Morony
 3 dam.

4 NEW SECTION. **Section 2. Basin closure -- exceptions.**

5 (1) As provided in 85-2-319 and subject to the provisions of
 6 subsection (2) of this section, the department and the board
 7 may not process or grant an application for a permit to
 8 appropriate water or for a reservation to reserve water
 9 within the upper Missouri River basin during the period from
 10 [the effective date of this act] until the final decrees
 11 have been issued in accordance with part 2 of this chapter
 12 for all of the subbasins of the upper Missouri River basin.

13 (2) The provisions of subsection (1) do not apply to:

14 (a) an application for a permit to appropriate ground
 15 water;

16 (b) an application for a permit to appropriate water
 17 for a nonconsumptive use;

18 (c) an application to store water during high spring
 19 flows; or

20 (d) temporary emergency appropriations as provided for
 21 in 85-2-113(3).

22 NEW SECTION. **Section 3. Codification instruction.**

23 [Sections 1 and 2] are intended to be codified as an
 24 integral part of Title 85, chapter 2, part 3, and the
 25 provisions of Title 85, chapter 2, part 3, apply to

1 [sections 1 and 2].

2 NEW SECTION. **Section 4. Effective date.** [This act] is
3 effective on passage and approval.

4 NEW SECTION. **Section 5. Applicability.** [This act]
5 applies to all applications received by the department of
6 natural resources and conservation after [the effective date
7 of this act].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0395, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: The bill proposes a temporary legislative closure for the 13 sub-basins of the Upper Missouri River Basin drainage area and its tributaries above Morony Dam at Great Falls, Montana until the final decrees have been issued in all 13 sub-basins. The closure would prohibit the Department or Board of Natural Resources and Conservation from processing or granting any applications for beneficial water use permit for consumptive surface water uses or reserved water. The closure would not apply to permit applications for groundwater, nonconsumptive uses, water stored during high spring flows, or temporary emergency appropriations.

ASSUMPTIONS:

1. This proposed bill essentially closes the 13 Upper Missouri River sub-basins to any consumptive surface water permit or reserved water applications with certain exceptions.
2. The Department of Natural Resources and Conservation (DNRC) received and issued 534 (76%) consumptive and 166 (24%) nonconsumptive surface water permits during the period July 1, 1973 to January 29, 1993 for an annual average of 36 per year.
3. For the first 10 years of Montana's permit system from July 1, 1973 to December 31, 1982, DNRC issued 340 (90.4%) consumptive and 36 (9.6%) nonconsumptive surface water permits for an average per year for the 10 year period of 37.6.
4. For the second 10 years from January 1, 1983 to January 29, 1993, DNRC issued 194 (60%) consumptive and 130 (40%) nonconsumptive surface water permits for an average per year for this 10 year period of 32.
5. For the past three calendar years (1990-1992), DNRC issued 16 (25.8%) consumptive and 46 (74.2%) nonconsumptive surface water permits for an average per year for this three year period of 20.6.
6. In calendar year 1992, DNRC issued 8 consumptive and 17 nonconsumptive permits in this basin, which is 5% of the total permits issued state wide in 1992.
7. Clearly, the trend over the past 20 years for issuance of water use permits in this basin has shifted from a high percentage of consumptive uses in the 1970s and early 1980s to a high percentage of nonconsumptive uses during the 1980s and early 1990s. This trend reversal is primarily due to the lack of water for new uses, water quality problems in the basin, and objections filed against the applications by Montana Power Company and the U.S. Bureau of Reclamation. If a consumptive permit is issued, the Bureau of Reclamation also usually required that the applicant purchase a temporary water use contract to offset any hydropower generation revenue losses.
8. Should this bill be enacted, the DNRCs workload in the Upper Missouri River Basin would essentially remain the same as it has been during the past three years.

FISCAL IMPACT: None.

David Lewis 2-4-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Mike Foster 2-5-93
MIKE FOSTER, PRIMARY SPONSOR DATE

Fiscal Note for HB0395, as introduced

HB 395

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By DICK KNOX, CHAIRMAN, on February 10, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: Reps. Brooke, Fagg, Schwinden, Swanson, Toole.

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 423, HB 318, HB 395, HB 380, HB 434
Executive Action: Berkeley Pit Resolution, HB 345, HB 417,
HB 420, HB 423

HEARING ON HB 423

Opening Statement by Sponsor:

REP. BOB GILBERT, HD 22, Sidney, presented HB 423, which would clarify the hearings procedure of the Tank Release Compensation Board.

added the amendments offered by Montana Power required more discussion and asked for delay of executive action until dialogues could be held with the company.

HEARING ON HB 395

Opening Statement by Sponsor:

REP. MIKE FOSTER, HD 32, Townsend, began the hearing on HB 395, which closes the upper Missouri River Basin to further issuance of consumptive surface water permits until the adjudication is complete.

Proponents' Testimony:

Susan Callahan, Montana Power, urged passage of HB 395.
EXHIBIT 14

Jo Brunner, Montana Water Resources Association, expressed support for the legislation.

Mike Voleskey, Montana Association of Conservation Districts, stated his organization wanted to go on record as supporting this bill.

Opponents' Testimony:

Bob Lane, Department of Fish, Wildlife & Parks (FWP), disseminated testimony stressing the department's objections to the legislation. EXHIBIT 15

Stan Bradshaw, Trout Unlimited, submitted proposed amendments to HB 395. EXHIBIT 16

John Bloomquist, Special Assistant, Montana Stockgrowers Association, objected to the amendments that had been offered to the legislation.

Questions From Committee Members and Responses:

The committee discussed the impact of the legislation on public and private interests, the affect of the proposed amendments, and questioned the sponsor, REP. FOSTER, extensively on the bill.

Closing by Sponsor:

REP. FOSTER stressed that many points heard during the hearing were similar to those heard on the Teton Basin issue. He addressed concerns that surfaced during testimony, including those stated by FWP.

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 2-10-93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK KNOX, CHAIRMAN	✓		
REP. ROLPH TUNBY, VICE CHAIRMAN	✓		
REP. JODY BIRD	✓		
REP. VIVIAN BROOKE		✓	
REP. RUSS FAGG		✓	
REP. GARY FELAND	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓		
REP. HAL HARPER	✓		
REP. SCOTT ORR	✓		
REP. BOB RANEY	✓		
REP. DORE SCHWINDEN		✓	
REP. JAY STOVALL	✓		
REP. EMILY SWANSON		✓	
REP. HOWARD TOOLE		✓	
REP. DOUG WAGNER	✓		

HR:1993
wp.rollcall.man
CS-09

EXHIBIT

DATE

HB

14

2-10-93

395

UPPER MISSOURI RIVER BASIN CLOSURE
Questions and Answers

Q: What is a basin closure?

A: A basin closure prevents the Department of Natural Resources and Conservation (DNRC) from issuing new water use permits in highly appropriated basins. Mont. Code Ann. § 85-2-319 allows either the legislature or DNRC to close a basin. Basin closure does not affect existing water rights nor does it affect the ability to make changes to existing water rights. Basin closure only affects new, proposed water uses.

Q: How is the Upper Missouri River Basin defined?

A: The Upper Missouri River Basin includes the Missouri River and all of its tributaries above Morony Dam near Great Falls.

Q: Why is basin closure being proposed in the Upper Missouri River Basin?

A: The basin closure proposal is largely a result of the recent water reservation process conducted in the Upper Missouri River Basin. Evidence submitted at the water reservation hearings clearly showed that the Upper Missouri River Basin is already overappropriated. The following evidence was introduced at the reservation hearings:

- * Agricultural groups introduced testimony showing that the Beaverhead, Red Rock, Big Hole, Ruby, Boulder, Jefferson, Gallatin, East Gallatin, Smith, Dearborn and Sun Rivers are all fully appropriated based on agricultural claims alone.
- * The Montana Power Company and the Bureau of Reclamation have large water rights at their dams on the Missouri River which are rarely satisfied except in occasional years during high spring flows.
- * DNRC prepared a water availability computer model which confirmed that no additional water is available in the Upper Missouri River Basin except in occasional years during high spring flows.

There is no additional water available for appropriation in the basin. Existing water right holders should not be forced to continually expend time and money to protect their water rights against new appropriations when there is no additional water.

- Q: Is the basin closure proposed in the Upper Missouri River a permanent, total closure?
- A: No, the closure is neither permanent nor total. The basin closure will last only until the basin has been adjudicated by the Montana Water Court. If the adjudication confirms that there is no additional water for new uses, the basin closure can be extended. During the period of the closure, groundwater wells, nonconsumptive uses of water, and storage projects utilizing high spring flows will be allowed.
- Q: Will the basin closure affect the water reservations granted in the Upper Missouri River Basin?
- A: The closure will suspend the water reservations granted to the Department of Fish, Wildlife and Parks (DFWP), the Department of Health and Environmental Sciences (DHES), the Bureau of Land Management (BLM), and various conservation districts. These water reservations contain a condition that the reservations "shall have no force and effect in any basin... for the period of time and for any class of uses for which permit applications are precluded."

The true value of these reservations are questionable since they have a very junior 1985 priority date. At the very best, the reservations may prevent new uses and diversions. To do so, however, the reservation holders must file objections to new permits and expend the time and money necessary to enforce their water reservations. This same objective can be accomplished in a much simpler and direct method by closing the basin. Basin closure will protect existing water users from further reductions in the water supply and will protect stream flows by preventing additional water diversions.

Prepared by Holly Franz for
The Montana Power Company
January 4, 1993
Revised February 2, 1993

HB 395
February 10, 1993

**Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the House Natural Resources Committee**

The Department of Fish, Wildlife & Parks believes that basin closures, in the proper circumstances, are a desirable, effective and even necessary water management tool. The Missouri River basin above Morony Dam is a prime candidate for consideration of a basin closure. Rarely is there sufficient water available for new permits in the upper basin, particularly during the irrigation season.

Under normal circumstances, the department would favor the basin closure proposed in HB 395. The closure would protect irrigation and other consumptive use rights and would normally protect the instream flow reservations of the department and the Department of Health and Environmental Sciences that were recently granted by the Board of Natural Resources and Conservation. However, because of a condition in the Board's order of June 30, 1992, the reservations granted would no longer exist for practical purposes under the present version of HB 395. This condition states:

The DFWP reservation shall have no force and effect in any basin, subbasin, drainage, subdrainage, stream, or single source of supply for the period of time and for any class of uses for which permit applications are precluded.

This condition, in conjunction with HB 395, would nullify most of the reservation process just recently completed on the Upper Missouri

River Basin above Fort Peck Dam. This basin includes approximately one-half the area and waters of the state.

Our agency spent over a half million license and federal excise tax dollars of sportsmen and women that were appropriated and approved by the legislature. The reservation process in the upper Missouri basin was supported by general fund appropriations of approximately \$1.3 million to DNRC to prepare an EIS and to conduct the extensive, lengthy and exhaustive hearing process. Of this amount, the Conservation Districts used general fund appropriations of about \$400,000 to prepare and advocate reservations for irrigation projects. Cities and towns received \$67,000.

The Board granted instream flow reservations in the upper Missouri River Basin to help protect water quality and the outstanding fishery and recreational values of the basin. Many of the rivers, including the Gallatin, Madison, Smith, Big Hole, Beaverhead and Missouri Rivers, have well deserved national and even international reputations. They are among the best in the world.

At the time the reservations were granted, the department recognized there were significant problems that the Board's condition on instream flows could cause. Now, in light of this bill and at least two other basin closure bills, the department believes that HB 395 presents another opportunity to take a careful look at the wisdom of the condition. For the following reasons, the Board's condition puts

the advocates of instream flows and consumptive water users, including irrigators, in a "Catch-22" that harms both instream values and the interests of irrigators and other consumptive water users.

First, an interpretation of the Board's condition that would nullify, at least in part, the instream reservations when they are most needed is both fundamentally unfair and unwise and flies in the face of the granting of instream reservations. The Board concluded after a three year process, following the submittal of reservation applications, that instream flows were needed and in the public interest. In total, the department spent the better part of 10 years in the process. The condition, in itself, frustrates the public's reliance and faith in a valid public process initiated by the legislature.

During the administrative hearing, holders of existing rights were concerned that their existing rights be protected, and they were. The department holds instream flow reservations on behalf of the public and asks that the public's rights be given this same recognition and protection. The public, through the department, is entitled to play a role in future water use and management issues in the basin that would affect the fisheries resource. However, the combination of this bill and the Board's order will treat instream flows in a way that no one would consider treating any other vested water rights. They will have no protection under this bill as written.

Second, and perhaps more important, the condition may harm the future hopes and expectations of present water users. Users in water short basins hope and dream of someday improving water availability and water management. Although none of us knows exactly what the future may bring, improving water availability through new storage or more efficient delivery systems can only be achieved with capital investments. It is doubtful that irrigators alone can fund such projects by themselves. For future projects to be feasible a partnership of all interests, including irrigation, fisheries and recreation, will almost inevitably be required. If state, and federal funds, are to be spent on fisheries and recreational benefits, then those benefits must be protected. The only way that instream values for fisheries and recreation can be assured of protection is through an instream flow reservation. These reservations are the one and only opportunity for recognizing and protecting instream values. If the reservations are nullified when they are most needed, this department will not be able to justify spending money in any partnership to improve storage or delivery systems.

Third, if the condition means that the instream reservations would have no force and effect against any junior consumptive use permits, there is a significant problem. Instream flows would not be protected against any junior permits issued between July 1, 1985, and the date of closure of the basin. July 1, 1985, is the priority date of the Upper Missouri River Basin reservations. Thus at the moment

of the basin closure, from a practical standpoint instream flow protection would disappear. These junior rights could then take water that had been protected by the senior instream flow reservations. The closure, in fact, would harm senior irrigation users as well as instream flows because water could be consumed that could not have been used before the closure. This turns the purpose of stream closures on its head. The Board could not have intended this result.

To give you an idea of the magnitude of this concern, there are approximately 557 permits issued or pending with a priority date after July 1, 1985, in the Upper Missouri River Basin above Fort Peck Dam.

The "no force and effect" condition in the Board's order is now proving in HB 395 that it has severe drawbacks. It prevents all of the parties with a legitimate interest from being free to consider basin closures on the merits of the closures themselves. If the Board's condition was removed, then the department supports the closure. An amendment for this purpose is attached.

Without the proposed amendment, the department would have to oppose the bill but not the concept of a closure for the Missouri Basin above Morony Dam.

PROPOSED AMENDMENTS TO HB 395
Montana Trout Unlimited
February 10, 1993

Page 2, line 12, after "basin.":

insert "(2) All consumptive use reservations granted by the board of natural resources and conservation shall be suspended until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins in the upper Missouri River basin.

(3) The basin closure described in subsections (1) and (2) of this section shall not affect a reservation to maintain a minimum flow, level, or quantity of water that was made prior to the closure."

Page (2), line 13:

delete "(2)"

insert "(4)"

PROPOSED AMENDMENT TO HB 395
FIRST (WHITE) COPY

1. Page 2, following line 21.

Insert: "NEW SECTION. Section 3. Validity of
Reservations. The closure in [section 2]
shall not render any instream reservation
granted by the Board of Natural Resources and
Conservation in its June 30, 1992, order of no
force and effect, notwithstanding any
condition to the contrary in that order. The
validity and existence of the instream
reservations are not affected nor diminished
during the closure in [section 2]."
Renumber: subsequent sections

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. HB 386, 395

DATE 2/10/93 SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
RACHAEL RAE SIRS	FAMILY (6)	380 X	
Pamela Carlson	FAMILY (3)	380 X	
Kathy Coleman	Self	380	
Stan Rm-Rhew	MT T.U.	HB 395	
David Ross	Audubon Leg. Fund	HB 380	
Mike Volody	MT Assoc. of Cons. Dist.	HB 395	
Bob Lynn	DFW & P		HB 395

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. _____
DATE 2/10/93 SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Susan Gallagher 40 E. Broadway, Suite	MT. Power Co.	X 395	
Ken Williams	MT Power / Entech	Amended 318 X	
STEPHANE ANDERSON	HOLMAN INC.	AMENDED 380	
Dexter Busby	MONTANA Refining	Amended 318	
Dan Whyte	STILLWATER PGM RESOURCES	318 AMEND	
Janelle Fallon	MT Petroleum	318 Amend	
Michelle Hargis	Fallon County		X HB939
XXXXXXXXXX	EPA	318	
John Augusta	Conoco	X	
Eric Finkbe	EPA	A	
Tom Danbert	Ash Grove Cement	amended 380	
Roger Thorvilson	DHES		
J. M. Mocklee	MT Coal Council	amended 318	
DADY WISEMAN	MATB	318 380 318	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN DICK KNOX**, on February 15, 1993, at
3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Feland

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 503, HB 448, HB 419, HB 571, HB 532,
HB 512, HB 407 and HB 567
Executive Action: HB 488, HB 379 HB 395, HB 454 and HB 434

HEARING ON HB 571

Opening Statement by Sponsor:

REP. DAVE BROWN, HD 72, Butte, stated HB 571 was drafted at the

Vote: TO ADOPT REP. TUNBY AMENDMENT NUMBER 1 TO HB 434. Motion carried with REPS. FELAND, GILBERT and FOSTER opposing the motion.

Motion: MOTION MADE THAT HB 434 DO PASS AS AMENDED.

Discussion: Mr. Kakuk noted that if both HB 434 and HB 532 are passed, the moratorium is extended.

REP. GILBERT said he opposes the motion that HB 434 Do Pass as amended. The bill merely extends an unconstitutional moratorium, he said.

Vote: Motion failed on a tie vote.

EXECUTIVE ACTION ON HB 395

Motion: REP. FOSTER MOVED THAT HB 395 DO PASS.

Discussion: REP. FOSTER said he will not pursue an amendment dealing with water reservations on the Teton and Missouri rivers.

REP. RANEY proposed amendments to the bill that will place FWP back in the reservation and establish instream flow for the department.

REP. FAGG said the amendment is unnecessary as it does not preserve reservations. He asked Michael Kakuk, legal counsel, to comment on the amendment. Mr. Kakuk responded that the proposed amendment attempts to codify DNRC's decision.

REP. RANEY noted that the bill, as amended, refers to the entire Missouri river above Great Falls.

Mr. Kakuk said the bill encompasses all reservations to the confluence near Three Forks.

REP. RANEY asked if the Dearborn River is included in this reservation. Bob Lane, FWP attorney, replied that all tributaries above the Morony Dam, Great Falls, will be included in the reservation, as well as some reservations below the dam. Any tributaries of the Missouri below the dam are, therefore, unaffected by this closure.

REP. FAGG asked if the bill affects current reservations. REP. RANEY responded that the bill will affect all reservations as it is an effective closure.

REP. BROOKE asked Holly Franz, Helena attorney, to comment on HB 395. Ms. Franz said the reservations have been accurately represented by Mr. Lane. When the order comes into affect, FWP cannot object to any new consumptive water use permits.

REP. HARPER stated the irony is that HB 395 is designed to protect against consumptive uses.

Motion/Vote: REP. SCHWINDEN MOVED TO ADOPT REP. RANEY'S AMENDMENT. Motion failed 10 to 6 with REPS. BIRD, FAGG, FELAND, FOSTER, GILBERT, ORR, STOVALL, WAGNER, TUNBY and KNOX opposing the motion.

Vote: HB 395 DO PASS. Motion carried 11 to 5 with REPS. BROOKE, RANEY, SCHWINDEN, SWANSON and TOOLE opposing the motion.

EXECUTIVE ACTION ON HB 488

Motion: REP. BROOKE MOVED THAT HB 488 DO PASS.

Motion/Vote: REP. WAGNER moved to amend HB 488. EXHIBIT 20 Motion carried unanimously.

Motion: REP. SCHWINDEN moved to amend HB 488. EXHIBIT 21

Discussion: REP. BIRD asked if the amendment will change "may" to "shall." REP. RANEY replied no, it will not.

Vote: TO ADOPT AMENDMENTS TO HB 488, EXHIBIT 21. Motion carried unanimously.

Discussion: REP. RANEY said that HB 488 is a "feel-good" bill that costs \$2,000 and accomplishes nothing. DSL said they will not be doing anything differently if this bill passes.

REP. GILBERT said if DSL can be directed to utilize standing dead timber, a positive step is being taken.

REP. BIRD noted that timber at Lookout Pass should be salvaged as it presents a fire danger.

Motion/Vote: HB 488 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 379

Discussion: REP. RANEY commented that according to previous testimony on HB 379, costs will be \$300,000. Perhaps the bill should be sent to appropriations, he added.

REP. FOSTER said the amendments, EXHIBITS 21a, b and c, will define detection limits and clarify that standards adopted by the board will not be less than detection limits.

REP. FAGG asked Michael Kakuk, legal counsel, if the amendment will change the fiscal note.

EXHIBIT 17
DATE 2-15-93
HB 395

Amendments to House Bill No. 395
First Reading Copy

Requested by Rep. Raney
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 13, 1993

1. Title, line 7.
Following: "PROJECTS;"
Insert: "PROTECTING CERTAIN RESERVATIONS;"

2. Page 2.
Following: line 21
Insert: "

NEW SECTION. Section 3. Validity of reservations. The closure under [section 2] does not render an instream reservation granted by the board in its June 30, 1992, order of no force and effect, notwithstanding any condition to the contrary in that order. The reservations are not affected or diminished during the closure under [section 2]."

Renumber: subsequent sections

3. Page 2, line 23.
Following: "1"
Strike: "and 2"
Insert: "through 3"

4. Page 3, line 1.
Following: "1"
Strike: "and 2"
Insert: "through 3"

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that House Bill 395 (first reading copy -- white) do pass .

Signed: _____
Dick Knox, Chair

Committee Vote:
Yes , No .

391013SC.Hss

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE

2/15/93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK KNOX, CHAIRMAN	✓		
REP. ROLPH TUNBY, VICE CHAIRMAN	✓		
REP. JODY BIRD	✓		
REP. VIVIAN BROOKE	✓		
REP. RUSS FAGG	✓		
REP. GARY FELAND	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓		
REP. HAL HARPER	✓		
REP. SCOTT ORR	✓		
REP. BOB RANEY	✓		
REP. DORE SCHWINDEN	✓		
REP. JAY STOVALL	✓		
REP. EMILY SWANSON	✓		
REP. HOWARD TOOLE	✓		
REP. DOUG WAGNER	✓		

HR:1993
wp.rollcall.man
CS-09

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on March 22, 1993, at 3:15 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SJR 29, HB 365, HB 395, HB 488, HB 503
Executive Action: None.

HEARING ON SJR 29

Opening Statement by Sponsor:

Senator Cecil Weeding, Senate District 14, stated SJR 29 would request the Environmental Quality Council (EQC) to conduct a study of the nondegradation provisions of the Montana water quality laws and their implementation. He said the EQC would then be required to report its findings and recommend legislation to members of the 54th Legislative Session. Senator Weeding noted SJR 29 was drafted in response to concerns raised by a variety of bills introduced this session pertaining to water

anything.

Mr. Bob Lane, FWP Legal Counsel, spoke from prepared testimony in support of HB 365 (Exhibit #5). He said Section 3 should be removed from the bill.

Mr. Stan Bradshaw, Montana Trout Unlimited (MTU), stated the support of his organization and Montana Wildlife Federation for HB 365. He said HB 365 "makes sense" because not enough water is in the Teton River. He noted DNRC's reservations would be suspended if HB 365 were passed. Mr. Bradshaw concluded Section 3 of the bill was unnecessary and urged the Committee to remove the section.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Keating asked Mr. Richard if, at one time, area ranchers used the Teton River as a primary water source. Mr. Richard replied yes and added many ranchers still do. He said the water must be treated before it can be used as drinking water.

Senator Weeding asked Representative Rose if Freezeout Lake drained the Fairfield Bench. Representative Rose replied Senator Weeding was correct.

Closing by Sponsor:

Representative Rose closed his remarks on HB 365.

HEARING ON HB 395

Opening Statement by Sponsor:

Representative Mike Foster, House District 32, stated HB 395 would close the upper Missouri River Basin to further issuance of any permits until adjudication is completed. He said the upper Missouri River Basin includes the Missouri River and all its tributaries above the Morony Dam near Great Falls. According to Representative Foster, HB 395 would recognize that the Missouri River Basin is over appropriated.

Proponents' Testimony:

Ms. Holly Franz, Montana Power Company (MPC), submitted to the record a fact sheet on the proposed closure of the Missouri River Basin (Exhibit #6). She said the primary purpose for basin closure is to protect existing water users' rights by prohibiting applications for additional users. Ms. Franz stated MPC has been concerned for decades about overuse of the Missouri River Basin and has objected to the issuance of additional permits. She concluded an in-depth study by DNRC determined there was "no water available in the Missouri River Basin".

Ms. Jo Brunner, MWRA, stated her support for HB 395.

Mr. Bob Lane, FWP Legal Counsel, spoke from prepared testimony in support of HB 395 (Exhibit #7).

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Swysgood asked Ms. Franz why stock water and domestic use had not been exempted from HB 395. Ms. Franz replied permit applications for non-consumptive uses, a permit to which MPC would not object, were reviewed on a case-by-case basis by DNRC. She said permit applications, in general, were being stayed.

Senator Swysgood asked Ms. Franz if MPC would support an amendment to exempt stock water and domestic uses from HB 395. Ms. Franz replied no.

Closing by Sponsor:

Representative Foster closed his remarks on HB 395.

HEARING ON HB 488Opening Statement by Sponsor:

Representative Ray Brandewie, House District 49, stated HB 488 would direct the DSL to establish a salvage timber program to make use of salvage timber before it decays to the point it has

ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES DATE 3/22

NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	✓		
Sen. Hockett	✓		
Sen. Bartlett	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Keating	✓		
Sen. Kennedy	✓		
Sen. Swift	✓		
Sen. Sunsgaard	✓		
Sen. McCernan	✓		
Sen. Treitz	✓		
Sen. Weeding	✓		
Sen. Weldon	✓		

**UPPER MISSOURI RIVER BASIN CLOSURE
Questions and Answers**

Q: What is a basin closure?

A: A basin closure prevents the Department of Natural Resources and Conservation (DNRC) from issuing new water use permits in highly appropriated basins. Mont. Code Ann. § 85-2-319 allows either the legislature or DNRC to close a basin. Basin closure does not affect existing water rights nor does it affect the ability to make changes to existing water rights. Basin closure only affects new, proposed water uses.

Q: How is the Upper Missouri River Basin defined?

A: The Upper Missouri River Basin includes the Missouri River and all of its tributaries above Morony Dam near Great Falls.

Q: Why is basin closure being proposed in the Upper Missouri River Basin?

A: The basin closure proposal is largely a result of the recent water reservation process conducted in the Upper Missouri River Basin. Evidence submitted at the water reservation hearings clearly showed that the Upper Missouri River Basin is already overappropriated. The following evidence was introduced at the reservation hearings:

- * Agricultural groups introduced testimony showing that the Beaverhead, Red Rock, Big Hole, Ruby, Boulder, Jefferson, Gallatin, East Gallatin, Smith, Dearborn and Sun Rivers are all fully appropriated based on agricultural claims alone.
- * The Montana Power Company and the Bureau of Reclamation have large water rights at their dams on the Missouri River which are rarely satisfied except in occasional years during high spring flows.
- * DNRC prepared a water availability computer model which confirmed that no additional water is available in the Upper Missouri River Basin except in occasional years during high spring flows.

There is no additional water available for appropriation in the basin. Existing water right holders should not be forced to continually expend time and money to protect their water rights against new appropriations when there is no additional water.

Q: Is the basin closure proposed in the Upper Missouri River a permanent, total closure?

A: No, the closure is neither permanent nor total. The basin closure will last only until the basin has been adjudicated by the Montana Water Court. If the adjudication confirms that there is no additional water for new uses, the basin closure can be extended. During the period of the closure, groundwater wells, nonconsumptive uses of water, and storage projects utilizing high spring flows will be allowed.

Q: Will the basin closure affect the water reservations granted in the Upper Missouri River Basin?

A: The closure will suspend the water reservations granted to the Department of Fish, Wildlife and Parks (DFWP), the Department of Health and Environmental Sciences (DHES), the Bureau of Land Management (BLM), and various conservation districts. These water reservations contain a condition that the reservations "shall have no force and effect in any basin... for the period of time and for any class of uses for which permit applications are precluded."

The true value of these reservations are debatable since they have a very junior 1985 priority date. At the very best, the reservations may prevent new uses and diversions. To do so, however, the reservation holders must file objections to new permits and expend the time and money necessary to enforce their water reservations. This same objective can be accomplished in a much simpler and direct method by closing the basin. Basin closure will protect existing water users from further reductions in the water supply and will protect stream flows by preventing additional water diversions.

Prepared by Holly Franz for
The Montana Power Company
January 4, 1993
Revised March 15, 1993

EXHIBIT #6
DATE 3-22-93
HB-395

TESTIMONY IN SUPPORT OF HOUSE BILL 395

My name is Holly Franz. I am testifying on behalf of the Montana Power Company (MPC) in support of HB 395. HB 395 will close the Upper Missouri River basin to further appropriations until the basin is adjudicated.

HB 395 is a basin closure bill. The primary purpose of a basin closure is protection of existing water rights. Basin closure protects existing water rights by prohibiting new junior water uses and by eliminating the need to spend time and money objecting to new uses on streams which are already overappropriated.

There has been much discussion about the various "motives" for supporting closure bills. The Montana Power Company's (MPC) motive in supporting HB 395 is to protect its senior water rights. MPC has eight dams on the Madison and Missouri River. The farthest upstream dam is Hebgen, near West Yellowstone, and the farthest downstream is Morony Dam near Great Falls. The Upper Missouri River Basin, as defined in House Bill 395, includes the entire Missouri River and its tributaries above Morony Dam. This includes the Gallatin, Madison, and Jefferson Rivers. The priority dates for MPC's water rights on the Missouri River range from 1892 to 1955. MPC's existing water rights, particularly its 7,100 cfs right at Holter Dam and its 10,000 cfs right at Cochrane Dam, are satisfied only in occasional years during high spring runoff.

For years, MPC has alleged that the Missouri River is fully appropriated. In the 1940s, MPC brought a lawsuit seeking to enjoin further diversions from the Missouri River upstream from Morony Dam. The Montana U.S. District Court ruled in 1942 that the Missouri River was fully appropriated. This case was appealed and overturned on separate jurisdictional grounds.

In 1977, MPC began to object to all new permit applications for consumptive use--again arguing that the Missouri River was fully appropriated. Notwithstanding MPC's objections, DNRC continued to issue new permits. MPC and the Bureau of Reclamation appealed the new permits to the district court. The district court ruled in favor of MPC and declared the new permits void. MPC, the Bureau and DNRC then entered into an agreement allowing these permits to be used until MPC and the Bureau's water rights are adjudicated. Most, if not all of the consumptive use permits issued after July 1, 1985, are subject to MPC's objection and will be declared void if MPC's water rights are adjudicated as claimed.

To further protect its water rights, MPC filed an objection to all of the consumptive water reservations applications in the Missouri River above Morony Dam. Despite MPC's objections, several municipalities and conservation districts were issued consumptive water reservations. DFWP and DHES also received instream flow

water reservations. Reservations were also granted to BLM and the Bureau.

The water reservation process did more than produce the famous (or infamous) closure condition about which you have heard so much. The reservation provided new substantive, indepth evidence of water availability in the Upper Missouri. You may remember Gary Fritz's testimony on other basin closure bills in which he stated there is no indepth analysis of water availability in the basins suggested for closure. This is not true in the Upper Missouri.

As part of the water reservation proceeding, DNRC developed a water availability computer model for the Upper Missouri River basin. This model considered historic stream flows, acres irrigated, irrigation efficiency, return flow and other relevant factors to determine water availability. The model determined that except for certain years during high spring flows, there is no further water available for appropriation in the Upper Missouri River basin. The model's results are consistent with MPC's water use records, which MPC has maintained for as long as its dams have existed.

MPC is not, of course, the only water user on the Missouri River. During the water reservation hearing, the agricultural objectors introduced evidence that many streams in the Upper Missouri, including the Beaverhead, Red Rock, Big Hole, Ruby, Boulder, Jefferson, Gallatin, East Gallatin, Smith, Dearborn and Sun Rivers, and many other tributaries are fully appropriated based on agricultural water rights alone. There is no question that the Upper Missouri is highly appropriated. MPC has been arguing this for years. It's time to close the basin.

As you have previously heard, basin closure is complicated by the board's closure condition. Under this condition, all of the reservations issued, except for municipalities, will be suspended "for the period of the closure and for the uses closed." House Bill 395 has no impact on the Board's order. As a result of the Board's condition, however, the passage of House Bill 395 will temporarily suspend the reservations of the DFWP, DHES, BLM, and the CDs. In other words, DFWP and the others will not be able to object to new consumptive surface water rights. Under basin closure, however, there will be no consumptive permits to object to because none can be issued. DFWP should be able to object, based on its reservation, to any water use excepted from the closure such as groundwater, nonconsumptive uses, storage during high spring flows, and temporary emergency appropriations.

At the reservations hearings, Pat Graham, the current DFWP director, testified that DFWP wanted a reservation for two reasons: to protect the status quo and to reserve water in case water becomes available in the future. DFWP can achieve both of these goals through basin closure. Basin closure maintains the status

quo by preventing any additional water diversions. Since the closure only lasts until the adjudication is complete, it also allows DFWP to protect water which may become available in the future. If there is unappropriated water available in the basin after adjudication, the closure will terminate and DFWP's reservation will be reinstated.

During the basin closure, DFWP may lose the ability to object to changes made to existing consumptive surface water rights. In the water reservation hearings, Liter Spence of DFWP testified that from 1978 through October 1991, DFWP objected to only two change applications in the Yellowstone River basin. Even when DFWP objected, it usually did not request that the change be denied, but rather sought a specific condition recognizing DFWP's water reservation. The positive impacts of basin closure clearly outweigh any possible benefit from DFWP filing an occasional objection to changes in existing water rights.

The Upper Missouri River basin is fully appropriated and should be closed to new consumptive, surface water permits. MPC urges your support of HB 395.

HB 395
March 22, 1993

**Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the Senate Natural Resources Committee**

The department supports the concept of a basin closure in the Missouri River basin above Morony Dam.

Our concern is with the impact of closures in the upper Missouri River Basin on the instream water reservations granted by the Board of Natural Resources and Conservation on June 30, 1992.

These reservations were granted for fisheries, recreation and water quality with a priority date of July 1, 1985. Because of a condition put on the reservations by the Board, the reservations for instream purposes and for irrigation are partially nullified.

In testimony on two Senate bills already heard by this committee and in testimony on two closure bills before a House committee, I have explained the department's concern with the impacts of the Board's condition and argued that it was now clear the Board's condition was not good public policy. However, both the House and Senate have decided so far to defer to the Board on this issue. The department accepts this decision. It preserves the status quo of the reservations as granted by the Board.

The department would strongly resist any attempts to amend this closure bill to completely eliminate the water reservations granted

by the Board. I raise this point because SB 282 initially had a section that did completely undo the work of the Board by eliminating the water reservations in the Jefferson and Madison River basins. This committee amended that section out.

DATE 3/22/93SENATE COMMITTEE ON Natural ResourcesBILLS BEING HEARD TODAY: SJR 29, HB 365, HB 395, HB 488,
HB 503

Name	Representing	Bill No.	Check One Support Oppose
------	--------------	----------	-----------------------------

Bill Reckelt		HB365	✓	
David Reckelt		HB365	✓	
Diane Walker		HB365	✓	
Richard Vian		HB365	✓	
Jeff Toliver	DSL	HB503	✓	
Jeanne Charin	NPRC Bull Mt Landowners	SJR 29	✓	
Kim Wilson	Clark Fork Coal	SJR 29	✓	
Teresa Erickson	NPRC	SJR 29	✓	
David Price	Bear Creek Council	SJR 29	✓	
Pat Clark	Cottwood Reserve Council	SJR 29	✓	
Robin Cunningham	FOAM	SJR 29	✓	
Eugene Jones	Sierra Club	SJR 29	✓	
Stan Bradshaw	MT. TU.	SJR 29 HB 365 HB 395	✓ Amended	
Shirley	CRC/NPRC	SJR 29	✓	
Andrea Stauder	NPRC	SJR 29	✓	
Wanda Larson	NPRC	SJR 29	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE

3/22/93

SENATE COMMITTEE ON

Natural Resources

BILLS BEING HEARD TODAY:

SJR 29, HB 365, HB 395,
HB 488, HB 503

Name

Representing

Bill
No.Check One
Support Oppose

in M.V.S.	State Rt. Sec.	SJR 29	X	
CESAR HERNANDEZ	CABINET RESOURCE GRP	SJR 29	X	
MUNA Jansson	Mikelson Land Co.	SJR 29	X	
Jim Jensen	MEIC	SJR 29	✓	
Richard Parks	KPRC	SJR 29	✓	
Peggy Trenk	WETA	SJR 29	✓	
Janet Ellis	MT Audubon Leg Fund	SJR 29 HB 503	✓ ✓	
Jim Rishers	MT. Wadsworth Feud	SJR 29 HB 365 HB 503	✓ ✓ ✓	
Stan Bradshaw	MT. T.U.	HB 503	✓	
Leo Barry	Entech	SJR 29	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on March 23, 1993, at 5:15 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None.
Executive Action: HB 488, HB 503, HB 30, HB 365,
HB 395, HB 64, HB 102

EXECUTIVE ACTION ON HB 488

Motion/Vote:

Senator Swift moved HB 488 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY. Senator Swift will carry HB 488 on the Senate floor.

Senator Bianchi asked Mr. Sihler if Senator Grosfield was correct. Mr. Sihler replied he was unsure but added Senator Grosfield's comments "seemed like a compelling argument".

Senator Keating stated in-stream flow would be protected by retaining the language in Section 3.

Senator Bianchi asked Ms. Holly Franz from Montana Power Company to comment. Ms. Franz replied she interpreted the language to state that any one with a reservation could object to any use exempted. She said she agreed with Senator Swysgood's comments.

Senator McClernan asked Ms. Franz if the Committee should retain Section 3 to protect in-stream flow. Ms. Franz suggested the Committee delete Section 3.

Senator Weeding asked Ms. Franz if the Board would have to go to the Legislature to change an order if Section 3 were retained. She replied Senator Weeding was correct. She concluded "the Teton River Basin condition was statutory but the condition of the rest of the basin could be changed by the Board".

Senator Bianchi asked Ms. Franz if the Board was required to review water reservations every ten years. Ms. Franz replied the Board would not have the authority to change the statute.

Vote:

Senator Doherty's motion to amend CARRIED eight votes to five by roll call vote.

Motion/Vote:

Senator Keating moved HB 365 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY. Senator Hockett will carry HB 365 on the Senate floor.

EXECUTIVE ACTION ON HB 395

Motion:

Senator Kennedy moved HB 395 BE CONCURRED IN.

Motion:

Senator Swysgood made a substitute motion to amend HB 395 to exempt domestic and stock water use from the bill.

42

Discussion:

Senator Swysgood stated he had not talked to Ms. Franz about this amendment but added the same exemption was present in the other two bills pertaining to basin closures. He said he offered the amendment for the "sake of consistency". Senator Swysgood asked Ms. Franz to comment on the proposed amendment.

Paul Sihler asked Senator Swysgood to specifically identify the kinds of water uses he wanted to exempt from HB 395. Senator Swysgood replied he wanted to incorporate the language on page 2, lines 18-19, of HB 365 into HB 395.

Ms. Franz replied she preferred that the amendment be not adopted because MPC currently objects to all those uses and deems them "consumptive". She said adoption of the amendment would not have much of a "practical effect". Ms. Franz suggested the Committee insert a coordinating instruction so that if both HB 365 and HB 395 were passed, Senator Swysgood's exemptions would apply.

Senator Swysgood stated Ms. Franz's amendment would be "selfish" and added the exemptions should be consistent throughout the basin closure bills. He noted HB 395 would close the Missouri River Basin temporarily while HB 365 and his bill would permanently close basins in their areas.

Vote:

Senator Swysgood's motion to amend HB 395 CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Kennedy moved HB 395 BE CONCURRED IN AS AMENDED. MOTION CARRIED UNANIMOUSLY. Senator Grosfield will carry HB 395 on the Senate floor.

EXECUTIVE ACTION ON HB 64

Motion:

Senator Keating moved HB 64 BE CONCURRED IN.

Discussion:

Senator Bianchi asked Paul Sihler to explain the intent of HB 64. Mr. Sihler replied the 52nd Legislature established a \$5 per ton fee on all out-of-state waste. He said that fee becomes effective on 1 July 1993. He noted HB 64 would extend that effective date through 1 July 1995 and would require the

ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES DATE 3-23-93

NAME	PRESENT	ABSENT	EXCUSED
CHAIR BIANCHI	✓		
VICE-CHAIR HOCKETT	✓		
SEN. BARTLETT	✓		
SEN. DOHERTY	✓		
SEN. GROSFIELD	✓		
SEN. KEATING	✓		
SEN. KENNEDY	✓		
SEN. MCCLENNAN	✓		
SEN. SWIFT	✓		
SEN. SWYSEGOOD	✓		
SEN. TVEIT	✓		
SEN. WEEDING	✓		
SEN. WELDON	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 24, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 395 (first reading copy -- blue), respectfully report that House Bill No. 395 be amended as follows and as so amended be concurred in.

Signed: _____

Don Bianchi
Senator Don Bianchi, Chair

That such amendments read:

1. Title, line 6.

Following: "WATER USE,"

Insert: "DOMESTIC, MUNICIPAL, OR STOCK USE,"

2. Page 2.

Following: line 17

Insert: "(c) an application for a permit to appropriate water for domestic, municipal, or stock use;"

Renumber: subsequent subsections

-END-

45

1 HOUSE BILL NO. 395

2 INTRODUCED BY FOSTER, GROSFIELD, BARTLETT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TEMPORARILY CLOSING THE
5 UPPER MISSOURI RIVER BASIN TO FURTHER APPROPRIATIONS, EXCEPT
6 APPROPRIATIONS FOR GROUND WATER, NONCONSUMPTIVE WATER USE,
7 DOMESTIC, MUNICIPAL, OR STOCK USE, AND STORAGE PROJECTS; AND
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY
9 DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. **Section 1. Definitions.** Unless the
13 context requires otherwise, in [sections 1 and 2], the
14 following definitions apply:

15 (1) "Application" means an application for a beneficial
16 water use permit pursuant to 85-2-302 or a water reservation
17 pursuant to 85-2-316.

18 (2) "Ground water" means water that is beneath the land
19 surface or beneath the bed of a stream, lake, reservoir, or
20 other body of surface water and that is not immediately or
21 directly connected to surface water.

22 (3) "Nonconsumptive use" means a beneficial use of
23 water that does not cause a reduction in the source of
24 supply and in which substantially all of the water returns
25 without delay to the source of supply, causing little or no

1 disruption in stream conditions.

2 (4) "Upper Missouri River basin" means the drainage
3 area of the Missouri River and its tributaries above Morony
4 dam.

5 NEW SECTION. **Section 2. Basin closure -- exceptions.**

6 (1) As provided in 85-2-319 and subject to the provisions of
7 subsection (2) of this section, the department and the board
8 may not process or grant an application for a permit to
9 appropriate water or for a reservation to reserve water
10 within the upper Missouri River basin during the period from
11 [the effective date of this act] until the final decrees
12 have been issued in accordance with part 2 of this chapter
13 for all of the subbasins of the upper Missouri River basin.

14 (2) The provisions of subsection (1) do not apply to:

15 (a) an application for a permit to appropriate ground
16 water;

17 (b) an application for a permit to appropriate water
18 for a nonconsumptive use;

19 (C) AN APPLICATION FOR A PERMIT TO APPROPRIATE WATER
20 FOR DOMESTIC, MUNICIPAL, OR STOCK USE;

21 ~~(c)~~(D) an application to store water during high spring
22 flows; or

23 ~~(d)~~(E) temporary emergency appropriations as provided
24 for in 85-2-113(3).

25 NEW SECTION. **Section 3. Codification instruction.**

46

1 [Sections 1 and 2] are intended to be codified as an
2 integral part of Title 85, chapter 2, part 3, and the
3 provisions of Title 85, chapter 2, part 3, apply to
4 [sections 1 and 2].

5 NEW SECTION. **Section 4. Effective date.** [This act] is
6 effective on passage and approval.

7 NEW SECTION. **Section 5. Applicability.** [This act]
8 applies to all applications received by the department of
9 natural resources and conservation after [the effective date
10 of this act].

-End-